

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Mendoza

February 23, 2009

An act to amend Sections 23001, 23027, and 23035 of, and to add Sections 23005.5 and 23010.5 to, the Financial Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as introduced, Mendoza. Deferred deposit transactions.

Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in the business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from making false, misleading, or deceptive advertisements regarding its business of making or negotiating deferred deposit transactions. Existing law prohibits a licensee from placing an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses that it is licensed by the Department of Corporations. Existing law authorizes the commissioner to require a licensee to maintain a file of its advertisements for a period of 90 days. Existing law provides that a customer who enters into a deferred deposit transaction shall not be subject to criminal penalties for failure to comply with the terms of a deferred deposit transaction agreement. Existing law requires an agreement to enter into a deferred deposit transaction to be in writing and to include specified information and disclosures. A willful violation of the California Deferred Deposit Transaction Law is a crime.

This bill would require specified applicants for licensure under the California Deferred Deposit Transaction Law, including, but not limited to, corporations, partnerships, and sole proprietorships, to include in their applications fingerprints and a completed statement of identity and questionnaire, as specified, for certain individuals, and other information, as specified. The bill would require a licensee to notify the department in writing of changes to the individuals named in the licensee's original application for licensure or if the licensee or any of those individuals has been found to have violated the laws of another state relative to deferred deposit transactions. The bill would also require a licensee to notify the department in writing when offering a new product or service that will generate more than 5 percent of the revenues of an office. The bill would make advertisements on the Internet by a licensee subject to the provisions regulating deferred deposit transaction advertisements and would require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use. The bill would prohibit a deferred deposit transaction customer from being threatened with criminal penalties for a failure to comply with the terms of an agreement and would prohibit a licensee from referring or delivering a check taken in a deferred deposit transaction to a prosecutor or other law enforcement official for purposes of collection or criminal prosecution unless that information is requested as part of an investigation. The bill would require a specified notice that is separate and distinct from the deferred deposit transaction agreement to be provided to and initialed by a customer before entering into the agreement. The bill would require that, if the transaction is conducted over the Internet, the customer shall agree in the written agreement to conduct the transaction and to receive notices and the agreement electronically. The bill would also require a licensee, when conducting deferred deposit transactions over the Internet, to make notices and the agreement available to a customer in a format that may be downloaded and printed or, if the customer is unable to download that information, to mail the documents to the customer within 24 hours of the transaction. Because a willful violation of the bill's provisions by a licensee would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 23001 of the Financial Code is amended to read:

23001. As used in this division, the following terms have the following meanings:

(a) “Deferred deposit transaction” means a transaction whereby a person defers depositing a customer’s personal check until a specific date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.

(b) “Commissioner” means the Commissioner of Corporations.

(c) “Department” means the Department of Corporations.

(d) “Licensee” means any person who offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. However, “licensee” does not include a state or federally chartered bank, thrift, savings association, industrial loan company, or credit union. “Licensee” also does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum fee not exceeding two dollars (\$2) as a service to its customers that is incidental to its main purpose or business. “Licensee” also does not include an employee regularly employed by a licensee at the licensee’s place of business. An employee, when acting under the scope of the employee’s employment, shall be exempt from any other law from which the employee’s employer is exempt.

(e) “Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government entity, or a political subdivision of a government entity.

(f) “Deferred deposit originator” means a person who offers, originates, or makes a deferred deposit transaction.

(g) “Controlling person” means any of the following:

1 (1) *For a corporation, trust, or association, an individual that*
2 *owns or controls, directly or indirectly, 10 percent or more of the*
3 *equity securities of the corporation, trust or association.*

4 (2) *For a partnership, an individual that owns or controls,*
5 *directly or indirectly, 10 percent or more of the outstanding interest*
6 *in the partnership.*

7 (h) *“Supervising manager” means an individual who acts as a*
8 *direct supervisor for any person or persons who manage or operate*
9 *one or more of a licensee’s offices where deferred deposit*
10 *transactions are made. A supervising manager may typically work*
11 *under a title such as a district manager, regional manager, or a*
12 *similar title, and has the authority to interpret and apply the*
13 *policies and procedures of the applicant.*

14 SEC. 2. Section 23005.5 is added to the Financial Code, to
15 read:

16 23005.5. (a) When filing an application pursuant to Section
17 23005, an applicant shall include fingerprints and a completed
18 statement of identity and questionnaire, as prescribed by the
19 commissioner, for the following:

20 (1) If the applicant is a corporation, trust, or association, each
21 officer, director and controlling person.

22 (2) If the applicant is a partnership, each general partner and
23 each controlling person.

24 (3) If the applicant is a sole proprietorship, the individual who
25 is the sole proprietor.

26 (4) Each supervising manager who manages or will manage one
27 or more offices of the applicant located in California.

28 (b) An applicant shall disclose in its application whether any
29 person named in the application, as specified in subdivision (a),
30 has, during the last 20 years, conducted a deferred deposit business
31 or similar business in any other state and, if so, the time period
32 during which that person conducted that business and whether the
33 person was found, either individually or as a representative of the
34 applicant, to have violated any provision of the applicable deferred
35 deposit transaction laws and regulations, or any similar laws and
36 regulations, of any other state.

37 (c) An applicant shall identify in its application any product or
38 service, in addition to deferred deposit transactions, that (1) the
39 applicant intends to offer in the office or offices the applicant seeks

1 to license and (2) the applicant anticipates will generate in excess
2 of 5 percent of the gross monthly revenue of any office.

3 SEC. 3. Section 23010.5 is added to the Financial Code, to
4 read:

5 23010.5. (a) A licensee shall notify the department in writing
6 of changes to persons named in the licensee's original application
7 for a license, or their successors, as follows:

8 (1) If the licensee is a corporation, trust, or association, the
9 licensee shall notify the department in writing within 10 days after
10 any change in an officer, director, or controlling person, and shall
11 submit fingerprints and a complete statement of identity and
12 questionnaire, as prescribed by the commissioner, for the new
13 officer, director or controlling person within 30 days of the date
14 of the change.

15 (2) If the licensee is a partnership, the licensee shall notify the
16 department in writing within 10 days after a change in a general
17 partner or controlling person, and shall submit fingerprints and a
18 complete statement of identity and questionnaire, as prescribed by
19 the commissioner, for the new general partner or controlling person
20 within 30 days of the change.

21 (3) If the licensee is a sole proprietorship, the licensee shall
22 notify the department in writing of an impending sale or transfer
23 and the purchaser or transferee shall obtain a valid license as
24 required prior to the sale or transfer of the business, or the licensee
25 shall surrender the license in compliance with the department's
26 procedures.

27 (4) A licensee shall notify the department in writing within 10
28 days after a change or addition of a supervising manager, and
29 submit fingerprints and a complete statement of identity and
30 questionnaire, as prescribed by the commissioner, for any new
31 supervising manager within 30 days of the change.

32 (b) A licensee shall notify the department in writing within 10
33 days of receiving notification that the licensee or any person named
34 as an officer, director, sole proprietor, controlling person, or
35 supervising manager has been found, either individually or as a
36 representative of the licensee, to have violated any provision of
37 the applicable deferred deposit transaction laws and regulations,
38 or any similar laws and regulations, of any other state.

39 (c) A licensee shall notify the department in writing that it
40 intends to offer a new product or service at least 10 days prior to

1 offering that product or service if the licensee anticipates that the
2 product or service will generate more than 5 percent of the gross
3 monthly revenue of any office. Any licensee that determines that
4 a product or service, other than deferred deposit transactions, is
5 generating in excess of 5 percent of the monthly gross revenue of
6 any licensed office shall notify the department in writing that it is
7 offering that product or service within 10 days of that
8 determination.

9 SEC. 4. Section 23027 of the Financial Code is amended to
10 read:

11 23027. (a) No licensee shall advertise, print, display, publish,
12 distribute, or broadcast, or cause or permit to be advertised, printed,
13 displayed, published, distributed or broadcast, in any manner,
14 *including on the Internet*, any statement or representation with
15 regard to the business subject to the provisions of this division,
16 including the rates, terms, or conditions for making or negotiating
17 deferred deposit transactions, that is false, misleading, or deceptive,
18 or that omits material information that is necessary to make the
19 statements not false, misleading, or deceptive.

20 (b) (1) No licensee shall place an advertisement disseminated
21 primarily in this state for a deferred deposit transaction *or primarily*
22 *intended to reach California residents, including advertisements*
23 *on the Internet*, unless the licensee ~~discloses~~, in the printed text of
24 the advertisement; or the oral text in the case of a radio or television
25 advertisement, ~~that the licensee is licensed by the department~~
26 ~~pursuant to this division~~; *makes the following disclosure:*

27
28 “[Insert licensee’s name] is licensed by the Department of
29 Corporations pursuant to the California Deferred Deposit
30 Transaction Law.”

31
32 (2) *The disclosure required under paragraph (1) shall be in the*
33 *same language as the primary language of the advertisement. If*
34 *the terms “California” or “Department” are abbreviated in a*
35 *printed disclosure, it shall not be deemed to be a violation of this*
36 *section.*

37 (c) The commissioner may require that rates of charges or fees,
38 if stated by the licensee, be stated fully and clearly in the manner
39 that the commissioner deems necessary to give adequate

1 information to, or to prevent misunderstanding by, prospective
2 customers.

3 (d) No advertising copy shall be used after its use has been
4 disapproved by the commissioner and the licensee is notified in
5 writing of the disapproval.

6 (e) ~~The commissioner may require licensees to~~ *A licensee shall*
7 maintain a file of all advertising copy for a period of ~~90 days~~ *two*
8 *years* from the date of its use. The file shall be available to the
9 commissioner upon request.

10 SEC. 5. Section 23035 of the Financial Code is amended to
11 read:

12 23035. (a) A licensee may defer the deposit of a customer's
13 personal check for up to 31 days, pursuant to the provisions of this
14 section. The face amount of the check shall not exceed three
15 hundred dollars (\$300). Each deferred deposit transaction shall be
16 made pursuant to a written agreement as described in subdivision
17 (e) that has been signed by the customer and by the licensee or an
18 authorized representative of the licensee.

19 (b) A customer who enters into a deferred deposit transaction
20 and offers a personal check to a licensee pursuant to an agreement
21 shall not be subject to, *or threatened with*, any criminal penalty
22 for the failure to comply with the terms of that agreement. *It is a*
23 *violation of this division for a licensee to refer or deliver a check*
24 *taken in a deferred deposit transaction to a prosecutor or other*
25 *law enforcement official for purposes of collection or criminal*
26 *prosecution, unless the prosecutor or law enforcement official*
27 *requests the check as part of an investigation not initiated by the*
28 *licensee.*

29 (c) Before entering into a deferred deposit transaction, licensees
30 shall distribute to customers a notice that *is distinct and separate*
31 *from the deferred deposit transaction agreement. The notice may*
32 *be included with a loan application or other information, provided*
33 *that it is clear and conspicuously disclosed. A customer shall initial*
34 *the notice to acknowledge receipt of a copy and the licensee shall*
35 *retain the initialed copy. This separate notice* shall include, but
36 not be limited to, the following:

37 (1) Information about charges for deferred deposit transactions.

38 (2) That if the customer's check is returned unpaid, the customer
39 may be charged an additional fee of up to fifteen dollars (\$15).

(3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.

(4) The department's toll-free telephone number for receiving calls regarding customer complaints and concerns.

(5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.

(6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

(d) The following notices shall be clearly and conspicuously posted in the unobstructed view of the public by all licensees in each location of a business providing deferred deposit transactions in letters not less than one-half inch in height:

(1) The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.

(2) The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate. The information ~~may~~ shall be provided in a chart as follows:

Amount Provided	Fee	Amount of Check	14-day APR	30-day APR
\$100	XX	XXX	XXX	XXX
\$200	XX	XXX	XXX	XXX

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States

1 currency and as an APR as required under the Federal Truth In
2 Lending Act and its regulations.

3 (2) A clear description of the customer's payment obligations
4 as required under the Federal Truth In Lending Act and its
5 regulations.

6 (3) The name, address, and telephone number of the licensee.

7 (4) The customer's name and address.

8 (5) The date to which deposit of check has been deferred (due
9 date).

10 (6) The payment plan, or extension, if applicable as allowed
11 under subdivision (c) of Section 23036.

12 (7) An itemization of the amount financed as required under
13 the Federal Truth In Lending Act and its regulations.

14 (8) Disclosure of any returned check charges.

15 (9) That the customer cannot be prosecuted or threatened with
16 prosecution to collect.

17 (10) That the licensee cannot accept collateral in connection
18 with the transaction.

19 (11) That the licensee cannot make a deferred deposit transaction
20 contingent on the purchase of another product or service.

21 *(12) If the transaction is being conducted over the Internet, that*
22 *the customer agrees to conduct the transaction electronically and*
23 *to receive the required notices and agreement electronically.*

24 ~~(12)~~

25 (13) Signature space for the customer and signature of the
26 licensee or authorized representative of the licensee and date of
27 the transaction.

28 ~~(13)~~

29 (14) Any other information that the commissioner shall deem
30 necessary by regulation.

31 (f) The notice required by subdivision (c) shall be written and
32 available in the same language principally used in any oral
33 discussions or negotiations leading to execution of the deferred
34 deposit agreement and shall be in at least 10-point type.

35 (g) The written agreement required by subdivision (e) shall be
36 written in the same language principally used in any oral
37 discussions or negotiations leading to execution of the deferred
38 deposit agreement; shall not be vague, unclear, or misleading and
39 shall be in at least 10-point type.

1 (h) Under no circumstances shall a deferred deposit transaction
2 agreement include any of the following:

3 (1) A hold harmless clause.

4 (2) A confession of judgment clause or power of attorney.

5 (3) Any assignment of or order for payment of wages or other
6 compensation for services.

7 (4) Any acceleration provision.

8 (5) Any unconscionable provision.

9 (i) If the licensee sells or otherwise transfers the debt at a later
10 date, the licensee shall clearly disclose in a written agreement that
11 any debt or checks held or transferred pursuant to a deferred deposit
12 transaction made pursuant to Section 23035 are not subject to the
13 provisions of Section 1719 of the Civil Code and that no customer
14 may be required to pay treble damages if the check or checks are
15 dishonored.

16 (j) *If a licensee conducts a deferred deposit transaction with a*
17 *customer over the Internet, the notices required in subdivisions*
18 *(c) and (d) and the agreement required in subdivision (e) shall be*
19 *provided to the customer electronically and shall be available for*
20 *the customer to download and print. If the customer is unable to*
21 *download these documents, the licensee shall mail the notices and*
22 *agreement to the customer within 24 hours of the Internet*
23 *transaction. Deferred deposit transactions conducted over the*
24 *Internet shall comply with the Uniform Electronic Transactions*
25 *Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of*
26 *Division 3 of the Civil Code).*

27 SEC. 6. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.